

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, denying petition for Class 1 reinstatement of oil and gas lease WYW-88355.

Reversed and remanded.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Termination

A class 1 petition for reinstatement of an oil and gas lease is properly granted where the record on appeal supports the lessee's claim of illness and demonstrates the requisite proximity and causality to justify the late payment of rental.

APPEARANCES: George A. Conti, Jr., Esq., Greensburg, Pennsylvania, for appellant.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Marian L. Kleiner has appealed from a January 16, 1992, decision of the Wyoming State Office, Bureau of Land Management (BLM), denying her class 1 petition to reinstate oil and gas lease WYW-88355. The lease terminated by operation of law, pursuant to 30 U.S.C. § 188(b) (1988), on September 1, 1991, the anniversary date of the lease, for failure to pay the annual rental on or before that date.

BLM issued noncompetitive oil and gas lease WYW-88355, embracing lots 1, 2, S½ NE¼, SE¼, T. 58 N., R. 81 W., sixth principal meridian, Sheridan County, Wyoming, to appellant, effective September 1, 1985. Appellant timely tendered the rental payment for the lease between 1986 and 1990.

In 1991, the Minerals Management Service (MMS) received money orders from appellant in payment of her lease rental on September 11, 1991, in an envelope bearing a postmark of September 9, 1991. In a notice dated October 31, 1991, BLM informed appellant that her lease had terminated automatically by operation of law because the rental payment had not been received on or before the anniversary date of the lease. It also explained her right to seek either class I or class II reinstatement and the requirements of both.

In its decision dated January 16, 1992, BLM denied appellant's class I petition. That petition is not included in the case record forwarded to the

Board by BLM; however, according to BLM's decision, appellant asserted in her petition that she contracted the flu "and couldn't get out to get a money order to send" to MMS. Apparently, appellant did not include any information with her petition in support of her allegation of illness, and on that basis, BLM denied her petition.

On appeal, appellant states that she was very ill for 8 days prior to September 1, 1991, and was confined to her home; that on August 31, 1991, she consulted a physician who diagnosed her as having gastroenteritis, or intestinal flu, and advised her to stay at home. In support of her claim she has submitted a note from her physician identifying her condition and "advis[ing] her to be on houserest" (Notice of Appeal/Statement of Reasons (SOR), Exh. B). Because of her illness, appellant relates, she was unable to go to work from August 26, 1991, to September 2, 1991, and she includes a note from her work supervisor verifying that appellant was "off work" on those dates (SOR, Exh. C).

[1] Section 31 of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1988), provides that when the lessee fails to pay rentals on or before the anniversary date of the lease for a lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall terminate by operation of law. See 43 CFR 3108.2-1(a); Carol B. Rodgers, 126 IBLA 117, 120 (1993).

However, an oil and gas lessee may receive class I reinstatement of its lease under section 31(c), 30 U.S.C. § 188(c) (1988), if the rental is paid within 20 days after the anniversary date, upon a showing that the failure to pay on or before the anniversary date "was either justifiable or not due to a lack of reasonable diligence on the part of the lessee." See 43 CFR 3108.2-2; Petro-Hunt Corp., 124 IBLA 318, 319 (1992).

In this case appellant tendered the rental within 20 days after the anniversary date. However, in order to obtain class I reinstatement, appellant bears the burden of showing by a preponderance of the evidence that failure to pay on or before the anniversary date was either justifiable or not due to a lack of reasonable diligence. 43 CFR 3108.2-2(b).

In order to establish reasonable diligence one must show that the rental payment was mailed on or before the lease anniversary date. See 43 CFR 3108.2-2(a); Gilbert and Bonnie Sockwell, 125 IBLA 150, 151 (1993). It is not disputed here that appellant mailed her rental payment after the due date. However, we have recognized that the failure to exercise reasonable diligence may be justifiable if it is demonstrated that, at or near the lease anniversary date, there existed sufficiently extenuating circumstances outside the lessee's control which affected the lessee's actions in failing to make timely payment. Gilbert and Bonnie Sockwell, supra at 152. These circumstances must be proximate in time to the lease anniversary date and must be the causative factor for the failure to exercise reasonable diligence. Id. Those factors causing the late payment must be shown to be beyond the lessee's control. See Ram Petroleum, Inc. v. Andrus, 658 F.2d 1349 (9th Cir. 1981); Ramoco Inc. v. Andrus, 649 F.2d 814 (10th Cir. 1981), cert. denied, 454 U.S. 1031 (1981).

This Board has previously held that late payments were justifiable where the death or illness of the lessee or a member of lessee's close family occurred in immediate proximity to the anniversary date and was the causative factor for failure to tender the rental payment timely. Sandra Lewis, 113 IBLA 174, 175 (1990); Hubert W. Scudder, 35 IBLA 58, 59 (1978); Billy Wright, 29 IBLA 81, 82-83 (1977). We have required, however, that the record contain evidence from which the Board could conclude that the alleged circumstances actually existed; that they were in immediate proximity to the anniversary date; and that they were the cause of the late payment. See Denise M. White, 120 IBLA 163, 164-65 (1991); Larremore Petroleum Partnership, 94 IBLA 30, 32-33 (1986).

Appellant's submission on appeal verifies the existence of the circumstances claimed, *i.e.*, that she contracted an illness on or about the anniversary date of her lease that prevented her from making timely payment of her lease rental. Appellant's lease, accordingly, should be reinstated under Class I.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, BLM's decision is reversed and remanded to BLM for action consistent with this decision.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

David L. Hughes
Administrative Judge